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**U.S. Department of  
Transportation**  
Office of the Secretary  
of Transportation

**DEPARTMENT ACTION ON APPLICATION IN DOCKET OST-2001-9653- 4**

(Joint Application of British Midland Airways Ltd. & Deutsche Lufthansa AG to display Lufthansa's designator code on British Midland flights between Manchester and Washington/Chicago)

Approved under assigned authority (14 CFR §385.13). (See Remarks, attached)

Date of Action: JULY 3, 2001

*for [Signature]*  
Director, Office of International Aviation

Attachment -- Docket OST-2001-9653

**Remarks:** American Airlines, Inc., filed an objection, stating that the application should be denied until the Department has granted final approval of American's proposed code-sharing arrangement with British Airways in Docket OST-99-6507. American argues that the Department's repeated grants of code-sharing authorizations to the Star Alliance for expanded services, while the Department continues to defer on the American/British Airways application, contravenes the Department's policy of encouraging the development of competing global alliances. It further states that the application is incomplete since the applicants failed to submit their underlying codesharing agreement, and the Department should take no action until they have negotiated and submitted an agreement for review and comment.

In their joint reply, British Midland and Lufthansa state that the Department has already fully considered and rejected American's arguments in previous cases, and that the Department does not require submission of codeshare agreements involving only foreign carriers.

We note that American has raised these same arguments before. In considering them, we have stated (*see, e.g.*, Order 2000-7-27 at 4, Order 2000-12-15 at 4, and Notice of Action Taken dated January 26, 2001, in Dockets OST-2000-6954 and OST-2000-6842), that the subject American/British Airways application is under consideration on its own merits in Docket OST-99-6507, that we did not see a public interest basis to withhold the authority then being requested until we reached a decision in the American/British Airways case, and that we did not believe that competitive considerations justified linking the case then before us to the pending American/British Airways code-share application. We find nothing in the record of this case that would lead us to reach a different conclusion.

As a final matter, we do not believe that the authority at issue here requires that we obtain a copy of codeshare agreement. It has not been our policy to require the filing of codeshare agreements between two foreign air carriers, and we do not find a persuasive public interest basis for adopting a different approach here.

This action is subject to the conditions attached. Persons entitled to petition the Department for review of this action under the Department's regulations, 14 CFR §385.30, should file their petitions within ten days of the date of this action. This action is effective immediately, and the filing of a petition for review will not alter its effectiveness.

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**British Midland/Lufthansa German Airlines (Docket OST-2001-9653)**

The code-share operations authorized here are subject to the following conditions:

- (a) The statement of authorization will remain in effect only as long as (i) British Midland and Lufthansa continue to hold the necessary underlying authority to operate the code-share services at issue, and (ii) the code-share agreement providing for the code-share operations remains in effect.
- (b) British Midland and/or Lufthansa must notify the Department no later than 30 days before they begin any new code-share service under the code-share services authorized here. Such notice shall identify the market(s) to be served, which carrier will be operating the aircraft in the code-share market added, and the date on which the service will begin. Such notices should be filed in Docket OST-2001-9653.
- (c) British Midland and/or Lufthansa must promptly notify the Department if the code-share agreement providing for the code-share operations is no longer effective or the carriers decide to cease operating any or all of the approved code-share services. Such notices should be filed in Docket OST-2001-9653.<sup>1</sup>
- (d) The code-sharing operations conducted under this authority must comply with 14 CFR 399.88 and with any amendments to the Department's regulations concerning code-share arrangements that may be adopted.<sup>2</sup> Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected.
- (e) The authority granted here is specifically conditioned so that neither carrier shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

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<sup>1</sup> We expect this notification to be received within 10 days of such non-effectiveness or of such decision.